SUPREME COURT, U. S.
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JOHN F. DAVIS, CLERK

No. 617

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

GENERAL PRECISION, INC.,

Petitioner,

—against—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONER IN SUPPORT OF GRANTING THE WRIT

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The Petition for Certiorari, we submit, has answered in the main all of the contentions made in Respondent's brief. However, we are impelled to reply to Respondent's contention as to the appropriateness of the "basic" issue herein presented.

Respondent, in its brief, states (p. 7):

> "1. The basic issue which petitioner seeks to raise—*i.e.*, whether it is illegal for supervisory members of an employer's personnel department to counsel and assist

rank-and-file employees with respect to their grievances (Pet. 2, 11-14)*—is not presented on the record here."

Petitioner's first issue is framed in the language of the order which Respondent prepared and the Circuit Court signed. That order (pp. 12 and 13 of Respondent's brief) requires Petitioner to cease and desist from maintaining its "Employee Counselor Plan, or . . . any other plan whereby respondent [Petitioner herein] directly or indirectly . . . provides representatives *to assist or counsel* employees in the prosecution of grievances, or to otherwise deal on their behalf with respondent concerning grievances." [Italics ours.] The language of Petitioner's first issue is almost the same as the language of the order. There is no room on this record for the claim that a paragraph in the order sought to be reviewed is not an issue presented herein.

The decision and order below are necessarily based upon the conclusion that if assistance and counselling be representation in the ordinary usage of the word, it must also signify representation within the meaning of the Act (see, Respondent's brief, pp. 7-8). We challenge this conclusion, which gives the case its broadest implications for industry in general. This Court has never hesitated to review instances where, although the conduct in question appears to fall within the literal words of a statute (including the very statute here involved), the conduct was not within the statute's essence, spirit and intent (see, Pet., pp. 18-19).

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* Actually, the issue, as stated in the Petition, contained the words "assist and counsel individual rank-and-file employees . . . in the presentation of their grievances" (Pet., p. 2).

CONCLUSION

The Petitioner respectfully reiterates that the petition for a writ of certiorari should be granted.

Dated: October 20, 1967.

Respectfully submitted,

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